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Attorneys for Defendants SURERIDE CHARTER, INC. dba SUN DIEGO CHARTER CO. (erroneously sued as "Sun Diego"), RICH ILLES, and SCOTT MCLEOD (erroneously sued as "Scott McLoud")

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Nour Eddine Elasali, Plaintiff, vs. Sun Diego, Rich Illes, Scott Mcloud, John Swets, Lori Ortiz, Lorenzo Ortiz, DOES 1 - 100, Defendants.	**CASE NO: C 07 cv02272 W (JMA)** **DEFENDANTS SURERIDE CHARTER, INC. DBA SUN DIEGO CHARTER CO., RICH ILLES, AND SCOTT MCLEOD'S NOTICE OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION; OR IN THE ALTERNATIVE DUE TO A PARALLEL STATE ACTION PENDING, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT.** Date: June 30, 2008 Judge: Hon. Thomas J. Whelan Dept: 7 [NO ORAL ARGUMENT PER LOCAL RULE]

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on June 30, 2008, or as soon thereafter as the matter may be heard before the Honorable Thomas J. Whelan, United States District Court Judge, located in Department 7 of the United States District Court - Southern District of California, located at940 Front Street, San Diego, California, 92101, Defendants SURERIDE CHARTER, INC. dba SUN DIEGO CHARTER CO., RICH ILLES, and SCOTT MCLEOD ("Defendants") shall move to dismiss the Complaint of Plaintiff NOUR EDDINE ELASALI ("Plaintiff.")

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Defendants' Motion is brought pursuant to the Federal Rules of Civil Procedure, particularly Rule 12(b). Defendants file this Motion to Dismiss on the basis that: (1) complete diversity does not exist; (2) the amount in controversy does not exceed $75,000.00; and (3) Plaintiff already has a parallel action filed in State Court. Federal Rules of Civil Procedure, Rule 12(b); 28 U.S.C. § 1332; Colorado River Water Conservation Dist. v. United States (1976) 424 U.S. 800, 817; Gintz v. Jack In The Box, Inc. 2006 U.S. Dist. LEXIS 88987 at 8; Nakash v. Marciano (1989) 882 F.2d 1411, 1417 (9th Circuit.) Consequently, this Court lacks subject matter jurisdiction, and the interests of justice dictate that this Complaint should be dismissed. Indeed, since Plaintiff already has an action in State Court regarding the same factual issues, the resources of two Courts should not be expended; and potentially conflicting rulings on legal issues based upon the same facts should not occur.

Defendants' Motion is and made upon the grounds set forth in the accompanying Motion to Dismiss, and will be based upon this Notice, the accompanying Memorandum of Points and Authorities, Request for Judicial Notice, the Notice of Lodgment, the Declaration of Davina Bloom, and all records and pleadings on file herein.

Respectfully submitted,

THE WATKINS FIRM, APC

Dated: June 3, 2008

MARK S. BAGULA. ESQ.
DAVINA A. B. BLOOM, ESQ.
Attorneys for Defendants,
SURERIDE CHARTER, INC. DBA SUN DIEGO CHARTER CO., RICH ILLES, AND SCOTT MCLEOD